IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Civil Writ Petition No.8390 of 2003

Feliciano Rodricks
since deceased by LRs :
Mr.Donowyn Feliciano Rodricks & anr. Petitioners

Vs.

Mr.Joseph Anthony Pereira & ors. Respondents

Ms.A.M.Bhambwani for petitioners.
Ms.Pallavi Divekar for resp.no.2.

CORAM: B.H.MARLAPALLE, J.

June 29, 2007.

P.C.

. Heard Ms.Bhambwani, the learned counsel for the petitioners who are the defendants in RAE & R Suit No.91/337 of 1984. In the said Suit they had moved Interim Notice No. 1707 of 2003 praying for directions for deleting some paragraphs in the in the affidavit filed by way of examination-in-chief under Order VIII Rule 4 of CPC and this application has been dismissed by the impugned order dated

18/10/2003. Consequent to the ad-interim relief granted by this Court on 1/12/2003 the trial of the suit filed in the year 1984 by the landlord has remained stayed.

. The learned Judge of the trial Court agreed with the contentions of the defendants that the affidavit in examination-in-chief to some extent had gone beyond the pleadings. As per the learned Judge, the applicants-defendants had the remedy to take those issues during the arguments so as to point out that the evidence cannot go beyond the pleadings of the parties and, therefore, the prayer made could not be granted more so when the PW 1 had appeared in the witness box. As per the trial Court the defendants have an opportunity to argue at the time of final arguments that the evidence already recorded beyond the pleadings was not admissible.

. The view taken by the trial Court cannot be termed as perverse or patently erroneous so as to cause interference under Article 227 of the Constitution. Hence petition is rejected summarily. The ad-interim order granted earlier stands vacated. The trial of the suit is hereby expedited. The suit

shall be heard and decided as expeditiously as possible and preferably within six months from the receipt of writ of this Court.

(B.H.MARL